

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

I.T.A. No.9368/DEL/2019  
Assessment Year 2014-15

<b>Shri Krishan Kumar Mittal S/o. Shri Munni Lal,</b> Prop. M/s. Mittal Trading Co., Railway Road, Kosli	Vs.	<b>ITO</b> Ward – 1, Rewari, Haryana
TAN/PAN: ABGPK 2647 C		
(Appellant)		(Respondent)

Appellant by:	-None-		
Respondent by:	Shri Rajesh Mahajan, Sr. D.R.		
Date of hearing:	16	04	2024
Date of pronouncement:	25	04	2024

**ORDER**

**PER PRADIP KUMAR KEDIA-AM:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-Rohtak ('CIT(A)' in short) dated 11.10.2019 arising from the assessment order dated 21.10.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2014-15.

2. The grounds of appeal raised by the assessee read as under:

1. *"That the order commissioner of income tax (Appeals) Gurgaon-1, u/s 250 dated 11.10.2019 is bad in law and on facts of the case, for various reasons and hence the same may kindly be quashed and in any case, the impugned additions be deleted.*

2. *The A.O erred in law as well as on the facts of the case in framing the assessment u/s 143(3) without affording adequate and reasonable opportunity and even without complying with confirming such action of the A.O. The impugned order having been passed in Gross breach of natural Justice, kindly be quashed.*

3.1 *The Ld A.O erred in law as well as on the facts, in making addition of Rs.47,91,845/- u/s 40A(3) of the Income Tax Act for cash*

*purchase made by appellant. The Ld. CIT(A) erred in confirming such addition made by A.O.*

- 3.2 *That the Ld A.O has erred in not appreciating the facts and document submitted during the Assessment proceeding. The Ld CIT(A) erred in confirming the action of A.O.*
- 4.1 *The Ld A O erred in law as well as on the facts of the case in making ad-hoc addition of Rs.2,74,893/- by disallowing 1/6 of various expenses debited in the P/L account for want of vouchers, on estimate basis. The Ld CIT(A) erred in confirming the Action of A.O.*
- 4.2 *The Ld A.O has not appreciated the document submitted at the time of assessment proceeding. The Ld CIT (A) also erred in not appreciating the document submitted at time of hearing.*
5. *That the conclusion and inference of Ld AO based on suspicious, Conjectures, surmises and extraneous and irrelevant considerations. The Ld CIT(A) erred in confirming the same;*
6. *That relief prayed for, may kindly be allowed and the order of the Ld. CIT(A) may kindly be quashed, set aside, annulled or modified;*
7. *That aforesaid ground of appeal are without prejudice to each other;*
8. *That appellant crave to vary, alter, amend or add to the aforesaid ground of appeal before or at the time of hearing of the above appeal.”*

3. When the matter was called for hearing none appeared for the assessee. The matter was accordingly proceeded *ex parte* owing to the fact that several opportunities granted in the past have remained unavailed by the assessee.

4. As per the grounds of appeal, the assessee has challenged the action of the CIT(A) on two grounds; (i) Addition of Rs.47,91,845/- under section 40A(3) of the Act towards cash purchases allegedly made by the assessee. (ii) Ad-hoc addition of Rs.2,74,893/- being disallowance of 1/6<sup>th</sup> of various expenses debited in the P/L account on estimated basis.

5. On perusal of the case records, it is noted that the CIT(A) has confirmed the addition under section 40A(3) of the Act on the ground that the exception available under section 6DD(k) of the Income Tax Rules is not available to the assessee owing to the fact that the assessee has failed to establish relationship of principal and agent between the assessee and one Shri Balaji Traders i.e. the firm from whom purchases in cash have been made in violation of provision of section 40A(3) of the Act. Similarly, ad-hoc disallowance of Rs.2,74,893/- out of expenses has made by the Assessing Officer have been confirmed on the ground that assessee has failed to substantiate the expenses with documentary evidences.

6. On a closure look, it is observed that the reason for disallowance is lack of substantiation of the plea raised. From the assessment order, it is noticed that the assessee in its defense has *inter alia* stated that the firm has no Bank account for transfer of payment otherwise than cash and the cash was paid to Balaji Trader who in turn had to pay the farmers in cash. The Assessing Officer has not dealt with the factum of non-availability of Bank account of the firm. The CIT(A) has endorsed the action of the Assessing Officer without dealing with the plea of the assessee. A reasoned order on the additions under section 40A(3) as well as estimated disallowance would be just and proper in the circumstances.

7. Both the issues are accordingly restored and sent back to the file of the CIT(A) for fresh adjudication in accordance with law after giving opportunity to the assessee. It shall be open to assessee to adduce such evidences and explanations as may be considered expedient. The assessee is cautioned to fully co-operate in the assessment proceedings without demur, failing which, the AO shall be at liberty to pass order such order as it may think fit in accordance with law.

8. In the result, appeal of the assessee is allowed *ex parte* for statistical purposes.

**Order pronounced in the open Court on 25/04/2024**

**Sd/-**

**[SUDHIR PAREEK]  
JUDICIAL MEMBER**

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: **25/04/2024**

*Priti Yadav, Sr.PS\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar